1946

File No. C. Sale of Goods 1/1

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Subject:- Opinions under the Sale of Goods Act 1920

File No. C. Sale of Goods 1/46

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C O N T E N T S.

Legal Department File No. O. Sale of Goods /46

Sr.No.	R.I./O.No.	Subject	Pages
		Opinions under the Sale of Goods Act. 1930	
1.	610 23-1-46	Sec. 26 Re: Compensation to be paid to the owners of the steelyard which was in possession of the food controller and which was lost in the B'bay explosion	1-2
2.	XX 6142 10-9-46	Re: Tenders invited by the Milk Commissioner for the disposal of tins and wooden cases Question whether there is any legal objection to selling the goods by public auction and recovering the loss if any from the deposit of the contractors in the event the contractors fail to remove the goods within specific time	3-5

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L.D.R.I.No. 10464 dated 29-11-45.

Submitted.

2. Please see H.L.A.'s opinion No. 7314, dated 24-10-44 and the notes und-erlying the same. The F.C.. was accordingly advised to suggest M/S. W.& T.Avery Ltd. Co.. to apply for compensation from the Govt. of India under the ~~x~~ Bombay Explosion (Compensation) Ordinance, 1944. Accordingly the firm was informed and was requested to apply for compensation (p. 31 ante) In reply M/s. W.& T.Avery Ltd. state that the steelyard ~~x~~ was delivered to the F.P.C. at the Red ~~the~~ Bungalow on 8th April 1944 and as the same was removed by him to the docks and was lost there in the explosion on the 14th April and Govt. was liable for the loss. F.D.(S) proposes to write off the cost of the steel yard amounting to Rs. 285/-. F.D. to whom the papers were forwarded state that since the G. of I. has disallowed the claim for compensation the question of ~~o~~ the ownership of the article must be decided first to fix the responsibility in consultation with the H.L.A. before writing off the amount. The H.L.A. is requested to confirm 'A' of F.D. note at p. 49 ante.

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Office of the P.L.A.

In view of the fact that the steelyard was retained by Government for many nearly six days (which in the circumstance may be considered unreasonable) and was removed to the docks without the permission of Messrs. W.T.Avery ,Ltd. Government may agree to bear the loss.

Sd/-P.N.Moos
22-1-46

O.O. Remembrancer of Legal Affairs.

U.R. to F. Misc No. 610. dated the 23rd January 1946.

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As a large number of th tins and wooden cases were available for disposal the Milk Commissioner, Bombay, inserted the following advertisement in the Times of India and other local newspapers:-

" Used Tins and Cases

Offers are invited for purchase of-

(i) Approximately 11,500 (eleven thousand five hundred) empty thns (sequre) in good condition. Capacity 112 lbs. net each. Weight of tin 5 lbs. each admeasuring 18" X 18" X 16".

(ii) Approximately 13,200 (thirteen thousand two hundered) empty wooden cases in good condition, capacity approximately 112 lbs. each admeasuring abour 19" X 19" X 17"

(iii) Approximately 5,000 (five thousand) empty tins (oblong) in good condition admeasuring 22" X13" X11"

Samples of these can be seen at the Central Separated Milk Powder Depot, Cricket Club of India, Brabourne Stadium.

Tenders should be sent in sealed covers to the Milk Commissioner, Secretariat, Bombay, not latter than 5 P.M. on 4th March 1946 accompanied by earnest money equivalent to 10p.c. of the value of the offer.

Rates must be quoted per tin or case, as the case may be, and separately for each item. Successful tenderers must complete taking of delivery from Government godowns within fifteen days from date of acceptance. Earnest money deposited by tenderers whose conditions are not accepted will be refunded."

On 4th March 1946, one Hakimji Bodalbhoy submitted his offer for the purchase of the article as follows:-

"Item No. 1. tins about 11,500 - at Re. 0-10-0 each;
" " 2. Wooden boxes 13,200 at Re.0-13-0 each;
" " 3. tins about 5000 - at Re.0-10-0 each.

He alos deposited Rs. 2,000/- with the cashier.

The Milk Commissioner, Bombay, in his letter No. M. C. S.M.P./98/4815 (a) F dated the 23rd March 1946 informed Hakimji Bodalbhoy as follows:-

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I am directed to state that your

quotations for tins cannot be accepted as they are ~~xxxx~~ low.

Your offer to purchase 13,2000 wooden cases at 13 annas

(annas thirteen only) per case has been accepted, subject

to the following conditions:-

(i) ~~Whatever~~ Whatever number of empty cases are shown to you as immediately available for removal should be removed within 15 days of intimation from the Government Godowns of this Department.

(ii) The balance of empty cases should likewise be removed from time to time as and when intimation is sent to you within 15 days thereof.

(iii) Advance cash payment should be made to the Milk Manager ever day, equivalent to the cost of the cases removed by you each day, from the Government Godowns.

(iv) Out of Rs. 2000/- deposited by you, only Rs. 800/- will be returned to you at once and the balance of Rs. 1200/-will be returned only after all the 13,200 (thirteen thousand two hundred) cases are removed by you and the value-thereof, received in cash by the Milk Manager.

(v) The decision of the Milk Commissioner will be final whether all the above conditions are fulfilled and you should comply with the orders passed by him.

Please confirm by return of post whether you accept the above conditions and ~~Milk~~ Milk Manager will be ~~x~~ directed to allow you to remove the materials."

In reply, Hakimji Bodalbhoy by his letter dated the

28th March 1946 informed the Milk Commissioner, Bombay, as

follows:-

"I am in receipt of you letter dated the 23rd inst. and beg to confirm it as stated in paragraphs enumbered (i) ,(iii), (iv) and (v) and the paragraph (ii) is confirmed subject to the conversation between myself and you that took place to-day.

I may submit that I am in a position to take the delivery of empty cases from your Department on or before 30th April 1946, as thereafter the season expires

In the Milk Commissioner's letter dated the 5th/6th

April 1946, Hakimji Bodalbhoy was informed as follows:-

"There is no objection to accepting your proposal to ~~remove~~ remove all the empty cases by 30th April 1946 provided you do so without leaving any in balance out of the lot shown to you by the Milk Manager for removal. Please commence removal without delay after making payments as per the conditions of this office letter, No. M.C./S.M. 88/4815(a)/F, dated the 23rd March 1946."

As, however, Hakimji Bodalbhoy failed to remove the

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empty wooden-cases-within the stipulated period, the Milk Commissioner in ~~&~~ his letter No.. M.C./S.M.P. 5966/88, dated the 1st May 1946 informed Hakimji that if he failed to remove all the empty cases by the 30th April 1946, the cases not taken away by him on that date would be sold by public auction and the loss, if any, would be recovered from him.

By his letter dated the 7th May 1946 Hakimji replied as follows:

> "I agreed to purchase from you 13,200 wooden cases in good condition as per your advertisement in public papers. A sample of the case in good condition ~~was~~ was shown to me. When I ~~start~~ started taking delivery I found that most of the cases were not in good condition as warranted. They were also not according to the sample. The size of the cases was also not according to the contract. I protested about this and I was asked to select the cases which were in good condition leaving those which were bad. I accordingly took delivery of 980 cases. Besides deposit of Rs. 2000/- I have paid to your office the price of 1000 cases. I was promised that I would be given the lids of the cases by the Depot ~~Manager~~ Manager. The godown-keeper has refused to give delivery of the lids. I have to require the delivery of lids for 980 cases of which I have taken delivery . As you had no cases according to contract quality and sizes I could not take delivery. There is a breach of contract on your part for failure to deliver goods of contract quality in good condition and of contracted sizes in time. I ~~and~~ hold you responsible for damages suffered by me for breach of contract on your part.
>
> I am prepared to have the cases tendered surveyed. Please let me know whether you would like to have a joint survey etc."

To this the Milk Commissioner replied on 18th May 1946:-

> Your attention is invited to this office letter No. M.C. /S.M.P. /88/4816(a)/F, dated the 23rd March 1946 , wherein it was stated that the empty cases shown to you~~r~~ as available for removal should be removed. Before confirming the terms of the above letter you wanted to be sure that all the tendered quantity would be made available before the end of April for removal, but you did not raise any of the issues which you have in the letter under reference.
>
> Government therefore, cannot entertain any of the points raised by you in the letter under reference et c."

~~Government therefore~~
In ~~continuation~~ continuation of the above letter the Milk Commissioner addressed another letter to Hakimji on 6th

June 1946:-

> ". . . . . it is regretted that in spite of previous intimation you have ~~it~~ failed and neglected to take delivery of 12220 cases agreed to be purchased by you and lying in the Government Godowns at the Cricket Club of India and Princess Dock.
>
> I am, therefore, to finally & call upon to take delivery of the said empty cases lying at the said Government Godowns, and remove the same therefrom against the payment of the contract price thereof within seven days from the receipt hereof by you, failing which this Department will have the said cases sold by a public auction at your risk and on your account holding you responsible for the resulting short fall, if any, between the contract price and the net sale proceeds."

As despite the above intimation, Hakimji Bodalbhoy has not cared to remove the wooden cases, it is proposed to have the same sold by public auction, and to recover the loss, if any, from the amount deposited by the Contractor with Government.

~~X~~ The R.L.A. is requested to advise whether there is any legal objection to selling the goods by public auction and recovering the loss, if any, from the deposit of the contractor.

It is true that under section 72 of the Indian Contract Act in the case of a breach of contract for sale of goods the damage is measured by the difference between the contract price and the market price on the day of delivery and Government would be competent to claim the difference from Hakimji Bodalbhoy as proposed provided he has committed a breach of the contract. But it seems difficult to hold that Hakimhi Bodalbhoy has been guilty of any breach of the contract.

Section 17 of the Indian Sale of Goods Act, 1930, provides:-

> (1) A contract of sale is a contract for sale by sample where there is a term in the contract express or implied, to that effect. . . . . .
>
> (2) In the case of a contract for sale by sample there is an implied condition-
>
> (a) that the bulk shall correspond with the sample in in quality;
> (b) that the buyer shall have a reasonable appertunity of comparing the bulk with the sample;
> (c) that the goods n shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

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"To constitute a sale by sample, it is necessary that there must be an ~~mip~~ express or implied term in the contract. That is, the offer must be made and accepted on the basis of the sample" (~~see~~ Lalchand v. Baij Nath, 63 , Cal. 736).

Section 15 ~~d~~ lays down that where there is a contract for the sale of goods by ~~descrip~~ description there is an implied condition that the goods shall correspond with the description; and if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. According to the terms of the advertisement calling for tenders in the present case 13, 200 empty wooden cases in good condition, capacity approximately ~~122~~ 112 lbs. each admeasuring ~~b~~ about 19" X 19" X 11" samples of which could be seen at the Central Separated Milk Powder Depot, Cricket Club of India, Brabourne Stadium, were offered for sale. Further conditions laid down by Government in their letter dated the 23rd March 1946 to ~~Hakim~~ Hakimji Bodalbhoy relate to the removal of empty cases. It is nowhere stated in the correspondence between Government and Hakimji that the latter inspected the empty ~~xxxx~~ cases at the depot and consented to appropriate them towards the contract. In the circumstance the ~~reas~~ reasonable inference would be that it is a sale by sample as well as description and Hakimji would be justified in repudiating the contract if the bulk of the empty cases did not correspond with the sample as well as the description. In his letter at page 7 ante he asserts that most of the cases were neither in good condition as warranted nor according to sample and that the ~~wei~~ size of the cases also was not according to the contract specification. If his assertions are correct sections 15 and 17 of the Indian Sale of Goods Act

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will apply and his repudiation of the contract would be justifiable.

Section 34 of the Indian Sale of Goods Act provides:-

"A delivery of part of goods, in progress of the delivery of the whole, has the same effect for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods with an intention of severing it from the whole, does not operate as a delivery of the remainder."

Hakimji Bodalbhoy in his letter at page 7 ante contends that he took deliver of 980 cases when he was asked to select the cases which were in good condition leaving those which were bad. If that contention be true, the delivery of 980 cases will not operate as a delivery of the remainder and consequently it will not be open to Government to claim the price of the remaining cases on the ground that the property therein has passed to contractor.

Having regard to the facts of the case Government is not likely to succeed in claiming either the damages or the price of the remaining empty cases from Hakimji Bodalbhoy. In the circumstances it is desirable that the dispute should be amicably settled.

Sd/-F.N.Moos
5-9-46

C.C. Remembrancer of Legal Affairs.

U.R. to the Milk Commissioner, No. 6142, dated the 10th September 1946.

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